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September 14, 2009

VIA HAND DELIVERY

The Honorable Phyllis J. Hamilton
U.S. District Court, Northern District of California
Oakland Division
3rd Floor—Courtroom 3
1301 Clay Street
Oakland, California 94612

Re: *Merrill Lynch, Pierce, Fenner & Smith Incorporated v. Kia Friedman*
Case No.: CV-09-2256

Dear Judge Hamilton:

We represent Plaintiff in the above-referenced action. On Wednesday, September 9, 2009, this Court granted Plaintiff's application for a temporary protective order and requested the parties submit an order by Monday, September 14th.

Unfortunately, the parties have been unable to reach an agreement on the form of the order. Attached is Plaintiff's proposed temporary protective order and copies of the parties' correspondence on this issue. Defendant has not submitted its own proposed order.

Respectfully,

Davis Wright Tremaine LLP

A handwritten signature in cursive script, reading "Sam N. Dawood".

Sam N. Dawood

cc: Jeff Malek, Esq., Counsel for Defendant (Via Facsimile: 310-371-7242)

DWT 13358757v1 4900000-000935

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10
11 Attorneys for Plaintiff
MERRILL LYNCH, PIERCE, FENNER &
12 SMITH INCORPORATED

13 UNITED STATES DISTRICT COURT FOR THE
14 NORTHERN DISTRICT OF CALIFORNIA
15 (SAN FRANCISCO DIVISION)

16
17 MERRILL LYNCH, PIERCE,
FENNER & SMITH
18 INCORPORATED,

19 Plaintiff,

20 vs.

21 KIA FRIEDMAN,

22 Defendant.
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27
28

Case No. CV-09-2256 PJH

TEMPORARY PROTECTIVE
ORDER

DATE: SEPTEMBER 3, 2009

TIME: 2:30 P.M.

DEPT.: 5, 17TH FLOOR

TEMPORARY PROTECTIVE ORDER

Merrill Lynch v. Kia Friedman
DWT 13354182v1 4900000-000935

DAVIS WRIGHT TREMAINE LLP
865 S. FIGUEROA ST. SUITE 2400
LOS ANGELES, CALIFORNIA 90017-2566
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1 The Court, having considered the moving, opposition, and reply papers and
 2 evidence submitted on Plaintiff Merrill Lynch's Motion for Writ of Attachment and
 3 Temporary Protective Order, and being fully advised in the matter, finds and orders
 4 as follows:

5 Plaintiff's Motion for Writ of Attachment is DENIED.

6 With respect to the Temporary Protective Order, the Court finds:

- 7 1. The Defendant is a natural person.
- 8 2. For purposes of this order, the amount to be secured is deemed to be
 9 Two Million Dollars (\$2,000,000).
- 10 3. The claim on which the application for attachment is based is one upon
 11 which an attachment may be issued under California Code of Civil Procedure §
 12 483.010.

13 4. Plaintiff has established the probable validity of the claim upon which
 14 the application for the attachment is based.

15 5. The order is not sought for a purpose other than the recovery upon the
 16 claim on which the application for the attachment is based.

17 6. Great or irreparable injury will result to the Plaintiff if this order is not
 18 issued, based on the danger that the property sought to be attached would be
 19 concealed, substantially impaired in value, or made unavailable to levy by other than
 20 concealment or substantial impairment in value.

21 **AS SUCH, IT IS HEREBY ORDERED**

22 Plaintiff's Temporary Protective Order is GRANTED.

23 Defendant shall not transfer, directly, or indirectly, any interest in the property
 24 described in Exhibit A attached hereto;

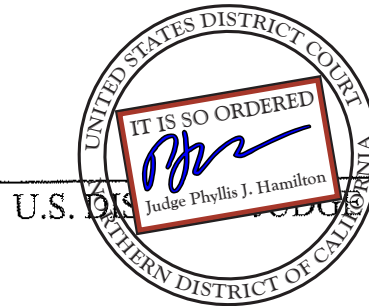
25 This Order shall expire at the earliest of the following times:

- 26 (1) when plaintiff levies upon the specific property described
 27 in Exhibit A attached hereto; or

(2) 40 days after the Court's issuance of this Order.

IT IS SO ORDERED.

DATED: this 18 day September 2009.



NOTICE TO DEFENDANT:

A. You may issue any number of checks against any of your accounts in a financial institution in this state in any amount for the following purposes:

(1) Payment of any payroll expenses (including any fringe benefits and taxes and premiums for workers' compensation and unemployment insurance) falling due in the ordinary course of business prior to the levy of a writ of attachment.

(2) Payment for goods thereafter delivered to you C.O.D. for use in your trade, business, or profession.

(3) Payment of taxes if payment is necessary to avoid penalties which will accrue if there is any further delay in payment.

(4) Payment of reasonable legal fees and reasonable costs and expenses required for your representation in this action.

B. In addition, you may issue any number of checks for any purpose so long as the total amount of such checks does not exceed the greater of the following:

(1) The amount by which the total amount on deposit exceeds the sum of Two Million Dollars (\$2,000,000), the amount sought to be secured by the attachment and the amounts permitted to be paid pursuant to this notice.

(2) One thousand dollars (\$1,000).

EXHIBIT A—PROPERTY SUBJECT TO PROTECTIVE ORDER

(1) Money in the bank deposit accounts of Defendants, wherever located in this state.

(2) Residential property of Defendant at 1122 Greenwood Avenue, Palo Alto, California, 94301.

(3) Any residential property in Defendant's possession or control in this state not described above.

(4) Accounts receivable, chattel paper, and general intangibles arising out of the conduct by Defendant in a trade, business, or profession, except any such individual claim with a principal balance of less than one hundred and fifty dollars (\$150).

(5) Defendant's negotiable documents of title.

(6) Defendant's Instruments.

(7) Defendant's Securities.

JEFFREY L. MALEK
SANDRA L. MALEK

MALEK & MALEK

STEVEN GOURLEY
OF COUNSEL

KAREN L. MARTIN, SPHR
HR CONSULTANT
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September 14, 2009

VIA FACSIMILE ONLY
(415) 276-6599
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Emilio G. Gonzalez, Esq.
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865 South Figueroa Street
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Los Angeles, CA 90017-2566

Re: *Kia Friedman adv. Merrill Lynch*

Dear Messrs. Dawood and Gonzalez:

To start, let me observe that when the Court told you to lodge a proposed Temporary Protective Order on Monday September 14, 2009, it is quite inappropriate to send us your proposed order at 6:36 pm on Friday September 11, 2009. Do I have to explain why?

Second, you failed to advise the Court that your Application does not include a request for a Temporary Protective Order. See Item 14, page three of your Application. Accordingly, there is really no way to determine what you might have requested had you properly completed the Application, and more importantly, it is impossible to determine what the Court was ordering by her statement/ruling that she would issue a Temporary Protective Order. Suffice it to say, none of the items you gratuitously placed in your proposed Temporary Protective Order are at all supported by the non-existent relief you requested.

We believe you have an ethical obligation to advise the Court that, in fact, you did not properly request a Temporary Protective. Otherwise, you are misleading the Court into error.

Moreover, the governing statute, *Code of Civil Procedure* §486.050 provides, in pertinent part, as follows:

(a) . . . [T]he temporary protective order may prohibit a transfer by the defendant of any of the defendant's property in this state subject to the levy of the writ of attachment. [Emphasis added.]

I think you know that the Court DID NOT grant your request for a writ of attachment.

Sam N. Dawood, Esq.
Emilio G. Gonzalez, Esq.
September 14, 2009
Page 2

Therefore, your attempt to have the Court sign an order containing findings that the Court did not make, and to obtain an order that is not permitted under the statutory governing scheme, without advising the Court of the potential for error if the Court follows your proposal, is quite frankly, abominable.

If you persist in submitting the proposed order that you have submitted to us, kindly also submit this letter with it.

Or better, advise the Court of the errors contained in the relief you seek to have the Court award you.

We will, however, make ourselves available for an "in-person" meeting to explore the possibility of a stipulated Temporary Protective Order, provided there is complete compliance with statutory requirements.

Very truly yours,

Jeffrey L. Malek

Jeffrey L. Malek

JLM:pg

cc: Sandra L. Malek, Esq.
Kia Friedman

MALEK & MALEK

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September 14, 2009

VIA FACSIMILE: (310) 371-7242

Jeffrey L. Malek, Esq.
225 Bush Street, 16th Floor
San Francisco, CA 94104

Re: *Merrill Lynch, Pierce, Fenner & Smith Incorporated v. Kia Friedman*
Case No.: CV-09-2256

Dear Mr. Malek:

I am responding to your letter dated today regarding plaintiff's proposed temporary protective order.

As a preliminary matter, I would note that I called your office both this morning and early afternoon to find out if you had a chance to review the proposed order. On both occasions I was told that you were unavailable. I also left you a detailed voice-mail message when I called this morning that you never responded to. And I emailed you at about 12:30 p.m. today requesting that you get back to me on the proposed order by no later than 5 p.m. Instead of calling me to discuss or providing me with any proposed revisions to the order, you responded with a nonsensical letter collaterally attacking the Court's decision and authority to issue the order.

Your letter is replete with misstatements. First, you say that I "failed to advise the Court that [our] Application does not include a request for a Temporary Protective Order" and "[w]e believe you have an ethical obligation to advise the Court that, in fact, you did not properly request a Temporary Protective [sic]. Otherwise, you are misleading the Court into error."

Nothing could be further from the truth. Our motion expressly requested a temporary protective order and the Court granted that request. These facts are not in dispute. And your contentions to the contrary are arguments that the Court has already considered and rejected.

Second, your letter says that we are attempting to have the Court sign an order containing findings it never made. But you do not state with any specificity what those findings are that the Court purportedly never made. And you claim the "order . . . is not permitted under the governing statutory scheme." But, you state no legal grounds whatsoever for this absurd contention. Again, collateral attacks on the Court's decision and authority to grant the temporary protective order have no place here.

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If you were merely asking for more time to review the proposed order, I would most certainly join you in requesting this relief from the Court. But this does not appear to be what you are seeking.

Instead, your "objections" constitute re-hashed arguments opposing the Court's issuance of a temporary protective order--not proposed revisions to the form of the order. As such, we do not believe your proposed "in person" meeting would be productive. Instead, as you requested, we will submit all correspondence on this issue to the Court with our proposed temporary protective order before the end of the day today.

Please contact me if you have any questions or wish to discuss.

Very truly yours,

Davis Wright Tremaine LLP

A handwritten signature in black ink, appearing to read "Sam N. Dawood", is written over the printed name.

Sam N. Dawood

cc: Emilio Gonzalez, Esq. (Via Facsimile: 213-633-6899)



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FAX COVER SHEET

Date: September 14, 2009 From: Sam N. Dawood
Time sent: 4:56 PM Telephone: 415.276.6566
Total pages (including cover page): 3 Fax: 415.276.4866

SEND TO:

Name:	Company Confirmation number:	Fax number:
Jeffrey L. Malek	Malek & Malek	310-371-7242
Emilio Gonzalez	Davis Wright Tremaine	213-633-6899

COMMENTS:

Re: Merrill Lynch, Pierce, Fenner & Smith Inc. v. Kia Friedman

9/14/09 letter attached.

Please deliver the following material as soon as possible.
Please notify us immediately at 415.276.6500 if not received properly. Thank you!

Operator: pjm
Extension:

Client Matter Number: 4900000-000935 /

The information contained in this facsimile message may be privileged and confidential information intended for the use of the individual or entity named below. If you have received this communication in error, please notify us immediately by telephone (collect if necessary) and return the original message to us at the above address via the U.S. mail. Thank you!

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